Editor's note: Appealed – remanded, Civ. No. F-77-128 (E.D.Cal. June 29, 1979), Hearing ordered by order dated April 19, 1983 –See 28 IBLA 344A th C below.

JESSIE A. BROWN (On Reconsideration)

IBLA 75-305 Decided January 17, 1977

Petition for reconsideration of Jessie A. Brown, 23 IBLA 23 (1975), which affirmed the decision of the California State Office, Bureau of Land Management, denying application R 1069 made pursuant to the Mining Claims Occupancy Act.

Petition granted; Jessie A. Brown, 23 IBLA 23 (1975), affirmed.

1. Mining Occupancy Act: Qualified Applicant

The fact that an applicant for relief under the Mining Claims Occupancy Act, as amended, 30 U.S.C. § 701 et seq. (1970), subsequent to filing the application, claims to be the trustee of an oral trust in a mining claim held for the benefit of her son, who occupied the claim, does not affect the statutory requirement that in order for an applicant to qualify under the Act he or she must be a residential occupant-owner. The applicant did not occupy the claim and her son did not file an application. Therefore, her application was properly rejected.

APPEARANCES: M. William Tilden, Esq., Lonergan, Jordan, Gresham, Varner & Savage, San Bernardino, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Appellant has filed a petition for reconsideration of Jessie A. Brown, 23 IBLA 23 (1975), which affirmed the California State Office's, Bureau of Land Management, rejection of appellant's application for relief under the Mining Claims Occupancy Act (MCOA) of October 23, 1962, 76 Stat. 1127, as amended, 30 U.S.C. § 701 et seq. (1970). We will entertain appellant's petition.

Appellant states that when she and her former husband, William Louis Tallon, purchased the Sunland Wash claim in 1954, it was done with the purpose of holding the claim for their son, W. L. Tallon, Jr., who at that time was only 16 years old. She explained that when Mr. Tallon died in 1965, and she gained full title to the claim, she continued to hold the claim for the benefit of her son.

She asserts that an oral trust was created in the mining claim and that oral trusts in land are recognized by the laws of the State of California.

On October 19, 1967, appellant filed MCOA application R 1069. In the affidavit filed by her son with the California State Office on December 26, 1973, he explained why his mother had filed the application:

> When it came to my attention that I should file under the Mining Claim [sic] Occupancy Act for patent from the Government, because of our lack of understanding and knowledge on the subject and our belief that if my mother, acting as trustee, appeared in the proceedings and sought the patent, it would be the correct and sufficient way of proceeding, I requested that my mother file such application in her name.

Appellant failed to disclose her interest as trustee for her son on the face of the application. She admits this was error, but asserts that such error was rectified by the submission of affidavits and other evidence to the California State Office relating to the ownership of the claim.

She also argues that as trustee her application must be viewed as the application of the trust for the benefit of her son. She states that her son, as beneficiary of the trust, could not file an application for the property.

Appellant held record title to the claim in 1967 when she filed her application. Her title was superior to all except the Federal Government, which holds legal title to all unpatented mining claims on public lands. Her son, who occupied the claim, was the equitable owner of such claim.

Accepting appellant's assertion that an oral trust was created with her son as beneficiary, we must determine whether her application, as trustee, was sufficient under the MCOA.

The Mining Claims Occupancy Act, as amended, 30 U.S.C. § 701 (1970), provides that a conveyance under the Act can only be made to a qualified applicant who applies for relief within the period ending June 30, 1971. A qualified applicant is defined in 30 U.S.C. § 702 (1970) as:

> * * * a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 3, 1962.

It is clear from the record that W. L. Tallon, Jr. was the occupant of the Sunland Wash claim, and also that he asserts he was the equitable owner of the claim. Therefore, he may be considered a residential occupant-owner.

While appellant may have been considered an owner of the claim in that she held record title, she was never a residential occupant. For that reason, she was not a qualified applicant. Appellant argues that the oral trust that was created changed the relationship so that, as trustee, appellant was the only person who could have filed an application. We cannot accept that argument.

W. L. Tallon, Jr., as equitable owner and occupant of the claim, was eligible to file an application. See Frank O. O'Mea, 10 IBLA 107 (1973). In fact, he was the only person qualified to file an application for the claim. The asserted relationship of trustee-beneficiary between appellant and her son cannot change the express language of 30 U.S.C. § 701 (1970) which states:

> Any conveyance * * * shall be made only to a qualified applicant, * * *. (Emphasis added.)

We are bound by such language. Appellant filed a timely application, yet she was not qualified. Her son was qualified, but he never filed an application.

As stated in our original decision, the Secretary of the Interior is limited by statute in that he may convey only to a qualified applicant. Funderberg v. Udall, 396 F.2d 638 (1968).

Having made our determination based on the above reasoning, we need not explore the question of whether or not an oral trust could be enforceable against the holder of the legal title to the claim -- the Federal Government. 1/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision, Jessie A. Brown, 23 IBLA 23 (1975), is affirmed.

_____
Martin Ritvo
Administrative Judge

I concur:

_____
Edward W. Stuebing
Administrative Judge

_____
1/ Since we dispose of the case on this ground, we need not pass upon the question of whether the act grants relief to one who located a claim upon withdrawn land.

Furthermore we note that section 6 of the act, 30 U.S.C. § 706(b) (1970), expressly provides for the imposition of trespass charges upon claims which were located on land withdrawn or otherwise not subject to mining location.

ADMINISTRATIVE JUDGE GOSS DISSENTING:

I feel we must determine whether appellant was trustee for her son W. L. Tallon, Jr. If she was not the trustee, then the decision below should be affirmed. "It is the duty of a trustee to administer the trust solely in the interest of the beneficiaries." 2 Scott, Law of Trusts 1298 (3rd ed. 1967). If appellant as trustee filed the application totally on behalf of the beneficiary, then I would hold it permissible for the application to be amended to provide for title to go to the beneficiary and for the beneficiary to be included as an additional applicant. Otherwise the purpose of the Act - to protect occupant-owners who could otherwise be evicted from their principal places of residence - would be completely frustrated.

Appellant's son was a minor when title to the claim was obtained. The existence of the trust has not been controverted herein. Appellant states she has done nothing in connection with the property. The facts of record substantiate the son's claim to the beneficial interest. On October 26, 1965, he appeared at the appropriate Bureau office and presented documents showing the chain of title to his mother, but he stated the property had been his claim since 1954. The petition was filed by appellant October 23, 1967. Neither appellant nor her son was notified until September 26, 1973, that the application was defective. If such notification could have been given prior to June 30, 1971, the apparent inequities herein could have been avoided.

The Mining Claims Occupancy Act is remedial in nature and should be liberally construed in accordance with its purpose. Frank O. O'Mea,
10 IBLA 187, 190 (1973). As to the Board's obligation and authority to invoke conceptions of equity in statutory construction, the principles expressed in City of Chicago v. Federal Power Commission, 385 F.2d 629 (D.C. Cir. 1967), cert. denied, 380 U.S. 945 (1968) may also be compared. The Circuit Court stated at 642-43:

> * * * It is argued to us that Section 4(e) "does not confer equity powers" upon respondent Commission. It may readily be agreed that a commission does not have the same range as an equity court to summon powers to the call of justice. * * * However, when an agency is exercising powers entrusted to it by Congress, it may have recourse to equitable conceptions in striving for the reasonableness that

broadly identifies the ambit of sound discretion. Conceptions of equity are not a special province of the courts but may properly be invoked by administrative agencies seeking to achieve "the necessities of control in an increasingly complex society without sacrifice of fundamental principles of fairness and justice."

Joseph W. Goss
Administrative Judge

April 19, 1983

28 IBLA 339	:	
IBLA 75-305	:	R-1069
	:	Mining Claim Occupancy
JESSIE A. BROWN ET AL.	:	
(On Judicial Remand)	:	Hearing Ordered

ORDER

By order dated February 16, 1983, this Board afforded appellants and the bureau of Land Management (BLM) an opportunity to file reports recommending procedures to be followed in complying with the remand ordered by the Court in Brown et al. v. Andrus et al., Civ. No. F-77-128 (D.E.D. Calif., June 29, 1979). 43 CFR 4.29. The period for the submission of such reports was subsequently extended to April 15, 1983.

Counsel for appellants and BLM, respectively, have filed timely submissions. BLM proposes an evidentiary hearing and appellants concur. BLM is of the opinion that the City of Los Angeles is a proper party to the proceeding, but appellants would condition the participation of the City upon a showing that the City has "a substantial stake in the outcome." BLM has indicated that the rights of the other potential parties named in our previous order either no longer exist or would not be affected, and the Board so finds.

BLM alos reports that Power Site Reserve No. 293 did not withdraw the land from the operation of the mining laws. This statement is in direct contradiction of BLM's own holding on the point in its decision of September 26, 1973, rejecting the subject application, as well as the BLM report of July 26, 1973, with regard thereto, which is contained in the administrative record.

Therefore, it is hereby ordered:

1. That the case be referred to the Hearings Division, Office of Hearings and Appeals for assignment to an Administrative Law Judge who will conduct an evidentiary hearing pursuant to 43 CFR 4.415 and who will render his decision dispositive of the case, which decision shall be subject to appeal to this Board by a party adversely affected thereby.

2. The City of Las Angeles shall be given notice of the hearing and be served copies of all documents preliminary to a ruling by the Administrative Law Judge on the question of the City's participation as a proper party.

The right of the City to withhold its consent to the conveyance of an interest pursuant to 30 U.S.C. S 703 (1970) will be decided at this stage.

3. BLM shall present evidence and pleadings concerning the nature and scope of the withdrawal of the subject land in Power Site Reserve No. 293 on October 18, 1912, subject to rebuttal by appellants, and the presiding judge shall lmake a determination of the effect of such withdrawal on the subject application.

4. Appellants shall assume the burden of proving whether a trust relationship existed between Jessie A. Brown and W. L. Tallon, Jr., on October 19, 1967, when Jessie A. Brown filed the subject application in her own name, and whether in so doing she was acting for the benefit of W. L. Tallon, Jr.

5. If it be found that in filing the application Jessie A. Brown was in fact acting on behalf of W. L. Tallon, Jr., pursuant to an oral trust, a determination must be made by the presiding judge as to the legal effect of such action on the disposition of this case.

6. If it be found that appellants, or either of them, ar qualified applicants for relief pursuant to the Mining Claims Occupancy Act, 30 U.S.C. §§ 701-709 (1970), a determination shall be made whether an appropriate exercise of discretion requires the extension or denial of relief.

7. If it be found that relief should be granted, a determination shall be made as to the form of such relief under the Act; i.e., a lease (including the duration and other terms thereof), life estate, or fee title; and the specific land and area affected by the interest to be conveyed. See 30 U.S.C. § 701 (1970).

Upon assignment of the case to his docket, the Administrative Law Judge will advise the parties and the City of Los Angeles so that the proceeding may go forward with all deliberate speed.

_____
Edward W. Stuebing
Administrative Judge

We concur:

_____
Bruce R. Harris
Administrative Judge

_____
Douglas E. Henriques
Administrative Judge

APPEARANCES:

Arthur J. Maillet, Esq.
Tracy & Maillet
Attorney at Law
The Bank Building
106 South Main Street
Post Office Box 485
Bishop, CA 93514

Burton J. Stanley, Esq.
Office of the Solicitor
Pacific Southwest Region
U.S. Dept. of the Interior
2800 Cottage Way, Rm. E-2753
Sacramento, CA 95825

cc:

Ira Reiner, Esq.
City Attorney
City of Los Angeles
P.O. Box 111
111 North Hope St.
Los Angeles, CA 90051